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Limited Jurisdiction Mental Health Courts
&
The Modern Prosecutor

Presented By:

BRENT HARRIS
City Prosecutor, City of Flagstaff

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Arizona Prosecuting Attorneys' Advisory Council
1951 West Camelback Road, Suite 202
Phoenix, Arizona

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

Limited Jurisdiction Mental Health Courts and the Modern Prosecutor

BRENT D. HARRIS, FLAGSTAFF CITY PROSECUTOR

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History of MHC in Flagstaff City Court

- ▶ Coconino County Criminal Justice Coordinating Committee begins looking at Specialty Courts, early 2000s
 - ▶ Mental Health Court - active today
 - ▶ Homeless Court - shelved
 - ▶ Serial Inebriant Program - shelved
 - ▶ Veteran's Services Court - active today
- ▶ Too few divisions, too few funding sources, too few participants are reasons for "shelved" programs

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Flagstaff Mental Health Court

- ▶ City of Flagstaff Prosecutor's Office and Municipal Court roll out Mental Health Court in 2004
 - ▶ Average 20 +/- enrollees at a time
- ▶ Any stakeholder may refer a person to MHC
 - ▶ Officer may infer or state "mental subject" or similar in DR
 - ▶ Judicial Officer (or clerk) at IA or Arraignment may notice something that makes them question whether D is SMI
 - ▶ Victim may contact PD or Prosecution Agency (whether or not invoking rights) and inform that D is SMI or Mental Health related (GMH or other).
 - ▶ Prosecutor at Pretrial Conference may notice something "off" and question D as to SMI status, prior hospitalizations or commitments, etc.
 - ▶ Public Defender's Office or Private Defense Attorney may request placement in court, or bring up an issue as mitigation that informs Prosecutor that D is likely eligible

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Stakeholders at MHC Conference

- ▶ Presiding Judge Thomas Chotena
- ▶ Court Clerk (if available, sometimes trainee also)
- ▶ City Prosecutor Brent Harris (or coverage attorney as needed)
- ▶ Public Defender (Harris & Winger has been contract PD since late '90s)
- ▶ Private Defense Counsel (usually subbed out by PD once client accepted)
- ▶ NARBHA/Regional BH reps
- ▶ The Guidance Center
 - ▶ Usually multiple reps due to differing programs enrollees attend
- ▶ Southwest Behavioral Health
 - ▶ Sometimes multiple reps
- ▶ Guardian/Conservator
 - ▶ Or other fiduciary as appropriate
- ▶ Probation/Other (occasional)
- ▶ Interns (occasional)

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MHC Process

- ▶ MHC meets every other Thursday (alternates with Veteran's Services Court) at 1 PM – present are the stakeholders from previous slide
- ▶ Service providers have generally provided us updates for enrolled clients the evening prior or that morning (changes regularly due to high turnover at these agencies)
- ▶ Service provider supplements written updates with verbal if any
- ▶ Prosecution states position as to compliance (if enrolled) or eligibility (if PTC), makes non-MHC plea offer (often as cudgel to get D into services), and reaffirms absolute right to trial in every case.
- ▶ Every potential MHC participant has counsel appointed – they may not have met client yet, so will present options, report back to team if likely R11, resistant to treatment, wants trial, or provide mitigation

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MHC process cont'd

- ▶ This is meant to be a collaborative process with the goals of:
 - ▶ Getting the defendant into services to control SMI behaviors;
 - ▶ Reducing recidivism and victimization of community members and family;
 - ▶ Providing justice to the defendant, victim and society;
 - ▶ Establishing restitution where appropriate;
 - ▶ Increasing the length of time between re-arrests and/or reducing the severity of behaviors leading to arrest
- ▶ So, there are no mini-trials or arguments in the pre-meeting – this undermines collaboration.
 - ▶ Motions and legal arguments are frequently made between counsel outside the meeting, or we re-set for regular trial calendar and do the normal lawyer stuff there

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MHC process – still?! Yes, still . . .

- ▶ Following the 1PM pre-meeting, Defense counsel and Service Providers determine who has appeared and what we do next.
 - ▶ Those already enrolled go to front of line, get new court dates, and leave pretty quickly (10-30 minutes tops)
 - ▶ 2 weeks out for newbies or those that need a higher level of monitoring.
 - ▶ 4 weeks out for those who are enrolled and adhering to treatment plan.
- ▶ While we're processing the enrolled participants, counsel is meeting with the new potential participants to:
 - ▶ Gauge competency, evaluate for Rule 11 where appropriate.
 - ▶ Go over trial, plea and MHC options and requirements.
 - ▶ Determine SMI status – often re-set 2 weeks once or twice to get evaluation done and report written and provided to team.
 - ▶ Sign ROIs, get contact info for D/Guardian/BHS rep

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Even more MHC process . . .

- ▶ MHC is a 6 months long process with a court date every 2 weeks for the first 3 months, and monthly thereafter with the end result being dismissal of the charge(s).
- ▶ There is no cost/fee for the program, and most enrollees are on AHCCCS so usually no out-of-pocket cost.
- ▶ Have had some private payee types – usually more trouble than it's worth as the private counselors either won't disclose much info (despite ROI) or say whatever their client pays them to.
- ▶ State does still seek restitution based on V input.
- ▶ Defendants can have multiple cases (and often do) in MHC at any given time – often when people go off meds there is a series of arrests in short order that are a product of the illness.

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But don't they all just go Rule 11!?

- ▶ NO!
- ▶ WELL, NOT ANYMORE!!
- ▶ Pre-Rule 11 Diversion Meetings – organized at the behest of the Coconino County Sheriff's Office (Jail Division) about 2 years ago.
- ▶ Intent is to reduce pre-Rule 11 incarceration delay (M only at present, Jail seeking County Attorney involvement for Fs).
- ▶ Jail IDs those in custody with MH issues, sends out list to Prosecution, BHS providers and Defense.
- ▶ Fortnightly meeting to discuss intervention inside/outside jail and/or on release, alternatives to resolve case prior to Rule 11 (or pre-Rule 11) being filed.
- ▶ Have reduced jail bed days by 2/3, have resulted in dozens of persons being released from jail directly into services.

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And the modern prosecutor -

How we did it:



What happened:



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Ain't technology grand!*

Old File Management



Current File Management

* Opinions may vary



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FAQs

- ▶ Can those with multiple cases enter the program? – Yes, people suffering from mental breakdowns or trauma due to life events or missing medications often get arrested in sprees. Would be counter productive to not let them in due to their illness.
- ▶ Can a person graduate and then re-enter? – Yes. Serious Mental Illness is a life-changing and on-going trauma that is (shockingly?) not going to be fixed by participation in a 6 month long misdemeanor specialty court. Our goal is to reduce recidivism and increase the length of time between law enforcement contacts.
- ▶ Can anyone that is SMI get in? – No. Enrollees must be interested in changing their ways, able to change their ways, willing to follow treatment guidelines, and generally be non-violent/non-sexual actors. We do not have the facilities, resources or security to handle violent or sexually motivated individuals.
- ▶ Is it dangerous to bring a few dozen SMI individuals into court together? – Maybe – we try to stagger hearings, move those we can through quickly, ID those who may be too violent or ill for the program, early on.

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Less Frequently A'd Qs?

- ▶ Questions
- ▶ Discussion
- ▶ Comments
- ▶ Anecdotes*
 - ▶ *time permitting

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Misdemeanors Matter

- ▶ Most victims of crimes and witnesses thereto are (thankfully?) going to be involved in a misdemeanor as opposed to a felony.
- ▶ We handle the "Quality of Life" crimes for the Citizens of Flagstaff.
- ▶ We work on the Broken Windows theory of crime (example ROPE program)
 - ▶ Fewer serial inebriants or persons with untreated mental illness on the street leads to:
 - ▶ Fewer assaults by them, Fewer assaults on them
 - ▶ Fewer property crimes, sex assaults, robberies, aggravated assaults
 - ▶ Programs like Exodus (in custody), residential treatment (IGC), MHC/VSC, increase services/resources, reduce intoxication and increase sobriety – reducing criminality

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We do what we can – cont'd

- ▶ We seek justice by coordinating regularly with:
 - ▶ Flagstaff Police Department, Coconino County Sheriff's Office, Game & Fish, Victim/Witness Services,
 - ▶ The Guidance Center, Southwest BHS, Coconino County Jail, Hope Lives,
 - ▶ The Veteran's Administration, Flagstaff Medical Center, Coconino County Attorney's Office,
 - ▶ and yes, Defense Counsel.

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MHC - Takeaways

- ▶ For those offenders with SMI diagnosis (or likely) will bring into program, establish services, then determine eligibility and appropriate resolution for case.
- ▶ Pre-Rule 11 Screenings of Offenders with regular meetings with Jail MH, City Prosecutor, TGC, SBHS, FMC and other stakeholders.
- ▶ No fees/costs for program, no fines, restitution available
- ▶ Holistic, non-adversarial, for betterment of D with positive social net benefit to society/victims
- ▶ No right to entry into program, no funding source.

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MHC – graduation day!



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